



DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Regulations Requiring Records to be Made and Retained by Financial Institutions, Banks, and Providers and Sellers of Prepaid Access

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, of currently approved information collections found in existing Bank Secrecy Act regulations. Specifically, the regulations covered by this notice and request for comments require certain financial institutions to make and retain records associated with certain types of transactions, including funds transfers, transmittals of funds, and prepaid access transactions, among other types of transactions. Although no changes are proposed to the information collections themselves, this request for comments covers a future expansion of the scope of the annual hourly burden and cost estimates associated with these regulations. This request for comments is made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome, and must be received on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS DOCUMENT IN THE *FEDERAL REGISTER*.]

ADDRESSES: Comments may be submitted by any of the following methods:

- Federal E-rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Refer to Docket Number FINCEN-2020-0016 and

the specific Office of Management and Budget (OMB) control numbers 1506-0058 and 1506-0059.

- Mail: Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2020-0016 and OMB control number 1506-0058 and 1506-0059.

Please submit comments by one method only. Comments will also be incorporated into FinCEN's review of existing regulations, as provided by Treasury's 2011 Plan for Retrospective Analysis of Existing Rules. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1-800-767-2825, or electronically at frc@fincen.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Public Law 107–56) and other legislation. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5314 and 5316–5332, and notes thereto, with implementing regulations at 31 CFR Chapter X.

The BSA authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to

implement anti-money laundering (AML) programs and compliance procedures.¹

Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury (the “Secretary”) to administer the BSA has been delegated to the Director of FinCEN.²

The Annunzio-Wylie Anti-Money Laundering Act of 1992 (Public Law 102-550) (Annunzio-Wylie) amended the BSA framework. Annunzio-Wylie authorizes the Secretary and the Board of Governors of the Federal Reserve System (the “Board”) to jointly issue regulations requiring insured depository institutions to maintain records of domestic funds transfers.³ The Secretary, but not the Board, is authorized to promulgate recordkeeping requirements for domestic wire transfers by nonbank financial institutions.⁴ In addition, Annunzio-Wylie authorizes the Secretary and the Board, after consultation with state banking supervisors, to jointly issue regulations requiring insured depository institutions and certain nonbank financial institutions to maintain records of international funds transfers and transmittals of funds.⁵

A. Information Required to Be Collected, Retained, and Transmitted under the Recordkeeping and Travel Rules (31 CFR 1020.410(a) and 31 CFR 1010.410(e) and (f)).

On January 3, 1995, Treasury and the Board jointly issued a recordkeeping rule (the “Recordkeeping Rule”) that requires banks and nonbank financial institutions to collect and retain information related to funds transfers and transmittals of funds in

¹ 31 U.S.C. 5311. Section 358 of the USA PATRIOT Act added language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism.

² Treasury Order 180-01 (re-affirmed Jan. 14, 2020).

³ 12 U.S.C. 1829b(b)(2).

⁴ 12 U.S.C. 1953.

⁵ 12 U.S.C. 1829b(b)(3). The terms “funds transfer,” “originator,” “beneficiary,” and “payment order” apply only in the context of banks. The term “transmittal of funds” includes a funds transfer and is its counterpart in the context of nonbank financial institutions. *See* 31 CFR 1010.100(ddd). Transmitters, recipients, and transmittal orders in the context of nonbank financial institutions play the same role as originators, beneficiaries, and payment orders in the context of banks.

amounts of \$3,000 or more.⁶ The Recordkeeping Rule is intended to help law enforcement and regulatory authorities to detect, investigate, and prosecute money laundering, and other financial crimes by preserving an information trail about persons sending and receiving funds through the funds transfer system.

At the same time, FinCEN issued a separate rule—the “Travel Rule”—that requires banks and nonbank financial institutions to transmit information on certain funds transfers and transmittals of funds to other banks or nonbank financial institutions participating in the transfer or transmittal.⁷ The Travel Rule and the Recordkeeping Rule complement each other. Generally, as noted below, the Recordkeeping Rule requires financial institutions to collect and retain the information that, under the Travel Rule, must be included with transmittal orders, although the Recordkeeping Rule also has other applications apart from ensuring that information is available to include with funds transfers. FinCEN issued the Travel Rule pursuant to statutory authority that permits the Treasury to require domestic financial institutions or nonfinancial trades or businesses to maintain appropriate procedures to ensure compliance with the BSA or to guard against money laundering, and to establish AML programs.⁸

The Recordkeeping Rule is codified at 31 CFR 1020.410(a) and 1010.410(e), and the Travel Rule is codified at 31 CFR 1010.410(f).⁹ This notice proposes to renew the regulations that implement the Recordkeeping Rule and the Travel Rule, along with

⁶ 60 FR 220 (Jan. 3, 1995).

⁷ 60 FR 234 (Jan. 3, 1995).

⁸ *Id.*; see also 31 U.S.C. 5218(a)(2) and (h).

⁹ Recordkeeping requirements for banks are set forth in 31 CFR 1020.410(a). Recordkeeping requirements for nonbank financial institutions are set forth in 31 CFR 1010.410(e). The Travel Rule—codified at 31 CFR 1010.410(f)—applies by its terms to both bank and nonbank financial institutions.

all of the other regulatory requirements under 31 CFR 1010.410, 1020.410, and 1022.420.^{10,11}

The Recordkeeping Rule and Travel Rule collectively require banks and nonbank financial institutions to collect, retain, and transmit information on funds transfers and transmittals of funds in amounts of \$3,000 or more.

Under the Recordkeeping Rule, the originator's bank or transmitter's financial institution must collect and retain the following information: (a) name and address of the originator or transmitter; (b) the amount of the payment or transmittal order; (c) the execution date of the payment or transmittal order; (d) any payment instructions received from the originator or transmitter with the payment or transmittal order; and (e) the identity of the beneficiary's bank or recipient's financial institution. In addition, the originator's bank or transmitter's financial institution must retain the following information if it receives that information from the originator or transmitter: (a) name and address of the beneficiary or recipient; (b) account number of the beneficiary or recipient; and (c) any other specific identifier of the beneficiary or recipient. The originator's bank or transmitter's financial institution is required to verify the identity of the person placing a payment or transmittal order if the order is made in person and the person placing the order is not an established customer.¹² Similarly, should the beneficiary's bank or recipient's financial institution deliver the proceeds to the

¹⁰ OMB control number 1506-0058 applies to 31 CFR 1010.410 and 31 CFR 1022.420. OMB control number 1506-0059 applies to 31 CFR 1020.410.

¹¹ On October 27, 2020, the Board and FinCEN (collectively, the "Agencies") issued a joint notice of proposed rulemaking to modify the thresholds in the Recordkeeping Rule and the Travel Rule. The proposed modification would reduce these thresholds from \$3,000 to \$250 for funds transfers and transmittals of funds that begin or end outside the United States. The proposed modification would also clarify the meaning of "money" as used in the Recordkeeping Rule and Travel Rule to ensure that the rules apply to domestic and cross-border transactions involving convertible virtual currency (CVC), which is a medium of exchange (such as cryptocurrency) that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status. The Agencies further proposed to clarify that these rules apply to domestic and cross-border transactions involving digital assets that have legal tender status. See 85 FR 68005 (October 27, 2020).

¹² The term "established customer" is defined at 31 CFR 1010.100(p).

beneficiary or recipient in person, the bank or nonbank financial institution must verify the identity of the beneficiary or recipient—and collect and retain various items of information identifying the beneficiary or recipient—if the beneficiary or recipient is not an established customer. Finally, an intermediary bank or financial institution—and the beneficiary’s bank or recipient’s financial institution—must retain originals or copies of payment or transmittal orders.

Under the Travel Rule, the originator’s bank or transmitter’s financial institution is required to include information, including all information required under the Recordkeeping Rule, in a payment or transmittal order sent by the bank or nonbank financial institution to another bank or nonbank financial institution in the payment chain. An intermediary bank or financial institution is also required to transmit this information to other banks or nonbank financial institutions in the payment chain, to the extent the information is received by the intermediary bank or financial institution.

B. Additional Records to be Made and Retained by Financial Institutions (31 CFR 1010.410(a) through (c)).

31 CFR 1010.410(a) through (c)¹³ require financial institutions¹⁴ to retain either the original or a copy of the following:

- A record of each extension of credit in excess of \$10,000, except if the extension of credit is secured by an interest in real property. The record must

¹³ 31 CFR 1010.410(d) requires the retention of a record of information for a period of time as the Secretary may require in an order issued under 31 CFR 1010.370(a), not to exceed five years. The recordkeeping burden for 31 CFR 1010.410(d) is accounted for under OMB control number 1506-0056, which applies to 31 CFR 1010.370(a).

¹⁴ Except for 31 CFR 1010.410(e), which only applies to financial institutions other than banks, each of the requirements of 31 CFR 1010.410 applies to “financial institutions” as defined in 31 CFR 1010.100(t). This provision defines a financial institution to include each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the following capacities: (1) a bank (except bank credit card systems); (2) a broker or dealer in securities; (3) a money services business as defined in 31 CFR 1010.100(ff); (4) A telegraph company; (5) a casino; (6) a card club; (7) a person subject to supervision by any state or Federal bank supervisory authority; (8) a futures commission merchant; (9) an introducing broker in commodities; or (10) a mutual fund.

include the name and address of the person to whom the extension of credit is made, and the amount, purpose, and date of the extension of credit.¹⁵

- A record of each request received or given regarding any transaction resulting in, or intended to result in but later canceled if such a record is normally made, the transfer of currency or other monetary instruments, funds, checks, investment securities, or credit of more than \$10,000 to or from any person, account, or place outside the United States.¹⁶
- A record of each request given to another financial institution or other person located in or outside of the United States, regarding a transaction intended to result in a transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than \$10,000 to a person, account, or place outside the United States.¹⁷

C. Additional Records to be Made and Retained by Banks (31 CFR 1020.410 (c)).

31 CFR 1020.410(c), requires banks to retain either the original or a copy of the following:¹⁸

- Each document granting signature authority over each deposit or share account, including any notations, if such are normally made, of specific identifying information to verify the identity of the signer.¹⁹
- A record on each deposit or share account, showing each transaction in, or with respect to, that account.²⁰

¹⁵ 31 CFR 1010.410(a).

¹⁶ 31 CFR 1010.410(b).

¹⁷ 31 CFR 1010.410(c).

¹⁸ Note that 31 CFR 1020.410(b) is obsolete on its face because the recordkeeping requirements apply to requirements that apply within 30 days of the sale or redemption of certificates of deposit after May 31, 1978 and before October 1, 2003, or the opening of deposit or share account after June 30, 1972 and before October 1, 2003.

¹⁹ 31 CFR 1020.410(c)(1).

²⁰ 31 CFR 1020.410(c)(2).

- Each check, clean draft, or money order drawn on the bank or issued and payable by it, with certain exceptions.²¹
- A record of each item in excess of \$100 comprising a debit to a customer's deposit or share account, with certain exceptions.²²
- A record of each item, including checks, drafts, or transfers of credit of more than \$10,000 remitted or transferred to a person, account, or place outside the United States.²³
- A record of each remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than \$10,000 to a person, account or place outside the United States.²⁴
- Each check or draft in excess of \$10,000 drawn on or issued by a foreign bank which the domestic bank has paid or presented to a nonbank drawee for payment.²⁵
- Each item, including checks, drafts or transfers of credit of more than \$10,000 received directly and not through a domestic financial institution, by letter, cable or any other means, from a bank, broker or dealer in foreign exchange outside the United States.²⁶
- A record of each receipt of currency, other monetary instruments, investment securities or checks, and of each transfer of funds or credit, of more than \$10,000 received on any one occasion directly and not through a domestic financial institution, from a bank, broker or dealer in foreign exchange outside the United States.²⁷

²¹ 31 CFR 1020.410(c)(3). See a list of exceptions to the recordkeeping requirement at 31 CFR 1020.410(c)(3).

²² 31 CFR 1020.410(c)(4).

²³ 31 CFR 1020.410(c)(5).

²⁴ 31 CFR 1020.410(c)(6).

²⁵ 31 CFR 1020.410(c)(7).

²⁶ 31 CFR 1020.410(c)(8).

²⁷ 31 CFR 1020.410(c)(9).

- Records prepared or received by a bank in the ordinary course of business, which would be needed to reconstruct a transaction account and to trace a check in excess of \$100 deposited in such account through its domestic processing system or to supply a description of a deposited check in excess of \$100. This requirement is only applicable to demand deposits.²⁸
- A record containing the name, address, and taxpayer identification number (TIN), if available, of the purchaser of each certificate of deposit, as well as a description of the instrument, notation of the method of payment, and the date of the transactions.²⁹
- A record containing the name, address, and TIN, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and the date of the transaction.³⁰
- Each deposit slip or credit ticket reflecting a transaction in excess of \$100 or the equivalent record for direct deposit or other wire transfer deposit transactions. The record must include the amount of any currency involved.³¹

D. Additional Records to be Maintained by Providers and Sellers of Prepaid Access (31 CFR 1022.420).

Providers and sellers of prepaid access are a type of money services business (MSB), as defined in §1010.100(ff)(4). BSA regulations specific to MSBs are found at 31 CFR Chapter X. Providers and sellers of prepaid access must maintain access to transactional records generated in the ordinary course of business that would be needed to reconstruct prepaid access activation, loads, reloads, purchases, withdrawals, transfers, or other prepaid-related transactions.

²⁸ 31 CFR 1020.410(c)(10).

²⁹ 31 CFR 1020.410(c)(11).

³⁰ 31 CFR 1020.410(c)(12).

³¹ 31 CFR 1020.410(c)(13).

II. Paperwork Reduction Act of 1995 (PRA)³²

Title: Records to be made and retained by financial institutions (31 CFR 1010.410), records to be made and retained by banks (31 CFR 1020.410), and additional records to be maintained by providers and sellers of prepaid access (31 CFR 1022.420).³³

OMB Control Number: 1506-0058 and 1506-0059.³⁴

Report Number: Not applicable.

Abstract: FinCEN is issuing this notice to renew the OMB control numbers for regulations requiring certain financial institutions to make and retain records associated with certain types of transactions, including funds transfers, transmittals of funds, and prepaid access transactions, among other types of transactions.

Affected Public: Businesses or other for-profit institutions, and non-profit institutions.

Type of Review:

- Renewal without change of a currently approved information collections.
- Propose for review and comment a renewal of the portion of the PRA burden that has been subject to notice and comment in the past (the “traditional annual PRA burden”).
- Propose for review and comment a future expansion and clarification of the scope of the PRA burden (the “future annual PRA burden”).

Frequency: As required.

Estimated Number of Respondents: 28,567 financial institutions.³⁵

Estimated Recordkeeping Burden:

In Part 1 of this notice, FinCEN describes the breakdown of the estimated number of financial institutions, by type, impacted by each regulatory requirement. In Part 2,

³² Public Law 104-13, 44 U.S.C. 3506(c)(2)(A).

³³ All of the records required to be made and retained under 31 CFR 1010.410, 1020.410, and 1022.420 are required to be retained for five years pursuant to 31 CFR 1010.430(d).

³⁴ OMB control number 1506-0058 applies to 31 CFR 1010.410 and 31 CFR 1022.420. OMB control number 1506-0059 applies to 31 CFR 1020.410.

³⁵ Table 1 below sets forth a breakdown of the types of financial institutions covered by this notice.

FinCEN proposes for review and comment a renewal of the estimate of the traditional annual PRA hourly burden, which includes an annual hourly burden estimate per financial institution similar to that used in the past, with the incorporation of a more robust cost estimate. The scope and methodology used in the past assigned a total annual hourly burden estimate, per financial institution, to multiple recordkeeping requirements within the regulations, and did not assign an annual hourly burden estimate, per financial institution, to each recordkeeping requirement. The prior renewals also did not include an estimate of the number of transactions, by type, for which records are required to be made and retained. FinCEN assesses that the volume of a given type of transaction by financial institution, for which a record is required to be made and retained, would be the best indication of the annual hourly burden estimate per financial institution. In Part 3, FinCEN proposes for review and comment a methodology to estimate the hourly burden and the cost of a future estimate of an annual PRA burden that includes the burden and cost broken down by each type of recordkeeping requirement covered by the regulations being renewed. The methodology also includes identifying estimates for the number of transactions conducted annually per financial institution, which would trigger each recordkeeping requirement. Finally, in Part 4, FinCEN solicits input from the public about: (a) the accuracy of the estimate of the traditional annual PRA burden; (b) a more granular proposed method to estimate a future annual PRA burden by calculating the burden per recordkeeping requirement; (c) the criteria, metrics, and most appropriate questions FinCEN should consider when researching the information to estimate the future annual PRA burden, according to the methodology proposed; and (d) any other comments about the regulations and the current and proposed future hourly burden and cost estimates of these requirements.

Part 1. Breakdown of the financial institutions covered by this notice

The breakdown of financial institutions, by type, covered by this notice is reflected in Table 1 below:

Table 1. Breakdown, by type, of financial institutions covered by this notice

Type of Financial Institution	Number of Financial Institutions
Banks	10,542 ³⁶
Brokers or dealers in securities	3,640 ³⁷
Futures commission merchants	61 ³⁸
Money services businesses (MSBs) that conduct money transmission	12,692 ³⁹
MSBs that are providers and sellers of prepaid access	1,632 ⁴⁰
Total number of financial institutions	28,567

31 CFR 1010.410(a) through (c)

Description of Recordkeepers: Financial institutions providing extensions of credit in excess of \$10,000 (other than those secured by real property), and engaging in transfers of funds, currency, other monetary instruments, checks, investment securities, or credit of more than \$10,000 to or from the United States. Although the regulations on their face would apply to all financial institutions, only banks, credit unions, brokers or dealers in securities, futures commission merchants (FCMs), and money transmitters would be likely to issue extensions of credit in excess of \$10,000, or transfer funds, currency, monetary instruments, checks, investment securities, or credit of more than \$10,000 to or from the United States.

³⁶ According to the Federal Deposit Insurance Corporation (FDIC) there were 5,103 FDIC-insured banks as of March 31, 2020. According to the Federal Reserve Board (FRB), there were 203 other entities supervised by the FRB, as of June 16, 2020, that fall within the definition of bank (20 Edge Act institutions, 15 agreement corporations (as defined in 12 CFR 28.2), and 168 foreign banking organizations). According to the National Credit Union Administration there were 5,236 federally regulated credit unions as of December 31, 2019.

³⁷ According to the Securities and Exchange Commission (SEC), there were 3,640 brokers or dealers in securities registered with the SEC, as of March 31, 2020.

³⁸ According to the Commodities and Futures Trading Commission (CFTC), there were 61 futures commission merchants registered with the CFTC, as of March 31, 2020.

³⁹ As of June 2020, there were 12,692 MSBs registered with FinCEN that indicated they were conducting money transmission.

⁴⁰ FinCEN's MSB registration database. See <https://www.fincen.gov/msb-state-selector>.

31 CFR 1010.410(d)

As noted above, the recordkeeping burden for 31 CFR 1010.410(d) is accounted for under OMB control number 1506-0056, which applies to 31 CFR 1010.370(a). A notice to renew OMB control number 1506-0056 will also be published in the Federal Register in December 2020.

31 CFR 1010.410(e)

Description of Recordkeepers: Financial institutions other than banks that conduct transmittals of funds, including funds transfers, in the amount of \$3,000 or more. Although the regulation on its face would apply to all nonbank financial institutions, mostly money transmitters that conduct transmittals of funds would be impacted.

31 CFR 1010.410(f)

Description of Recordkeepers: Financial institutions that are the transmitting or intermediary financial institution in a funds transfer or transmittal of funds. Although the regulation on its face would apply to all financial institutions, only banks, including credit unions, and money transmitters that conduct funds transfers or transmittals of funds would be impacted.

31 CFR 1020.410

Description of Recordkeepers: Banks, including credit unions, that conduct funds transfers by acting as the transmitting, intermediary, or recipient bank outlined in 31 CFR 1020.410(a), and banks that conduct transactions outlined in 31 CFR 1020.410(c).

31 CFR 1022.420

Description of Recordkeepers: MSBs that are provider and sellers of prepaid access, as defined in 31 CFR 1010.100(ff)(4) and (7), that conduct prepaid access-related transactions.

Part 2. Traditional annual PRA burden and cost

OMB control number 1506-0058

31 CFR 1010.410(a) through (c)

Each financial institution must retain an original or a copy of records related to extensions of credit in excess of \$10,000 (other than those secured by real property), and an original or copy of records related to transfers of funds, currency, other monetary instruments, checks, investment securities, or credit of more than \$10,000 to or from the United States.⁴¹ Due to the challenges of obtaining the total number of such records required to be maintained per financial institution, in its most recent control number renewal, FinCEN estimated that the annual recordkeeping burden per financial institution for these requirements was 50 hours.⁴² FinCEN continues to estimate that the annual hourly burden of complying with 31 CFR 1010.410(a) through (c) is 50 hours per financial institution.

26,935 financial institutions⁴³ multiplied by 50 hours, results in a total annual hourly burden estimate of 1,346,750 hours.

31 CFR 1010.410(e)

Each nonbank financial institution must collect and retain information related to transmittals of funds in amounts of \$3,000 or more. Due to the challenges of obtaining the total number of transmittals of funds of \$3,000 or more conducted per nonbank financial institution, FinCEN estimated, in its most recent control number renewal, that the annual recordkeeping burden per financial institution was 16 hours.⁴⁴ FinCEN

⁴¹ 31 CFR 1010.410(a) through (c).

⁴² 82 FR 31686, 31688 (July 7, 2017).

⁴³ See Table 1, *supra*. 26,935 represents the number of financial institutions listed in the title of this notice, other than MSBs that are providers and sellers of prepaid access, because such MSBs would not conduct transactions described in 31 CFR 1010.410(a) through (c).

⁴⁴ 82 FR 31686, 31688 (July 7, 2017). Note that, due to an administrative error, the 2017 control number renewal inadvertently describes this 16 hour burden as applicable to the requirements of both 31 CFR 1010.410(e) and 31 CFR 1010.410(f).

continues to estimate that the annual hourly burden to comply with 31 CFR

1010.410(e) is 16 hours per financial institution.

12,692 MSBs⁴⁵ providing money transmission services multiplied by 16 hours, results in a total annual hourly burden estimate of 203,072 hours.

31 CFR 1010.410(f)

Each financial institution must transmit information on funds transfers and transmittals of funds when acting as the transmitting or intermediary financial institution. Due to the challenges of obtaining the total number of funds transfers or transmittals of funds for which a financial institution was acting as the transmitting or intermediary financial institution, FinCEN estimated, in its most recent control number renewal, that the annual recordkeeping burden per financial institution was 12 hours.⁴⁶ FinCEN continues to estimate that the annual hourly burden to comply with 31 CFR 1010.410(f) is 12 hours per financial institution.

23,234 banks and MSBs conducting money transmission,⁴⁷ multiplied by 12 hours, results in a total annual hourly burden estimate of 278,808 hours.

31 CFR 1022.420

Each provider or seller of prepaid access is required to maintain access to transactional records generated in the ordinary course of business that would be needed to reconstruct prepaid access activation, loads, reloads, purchases, withdrawals, transfers, or other prepaid-related transactions. Due to the challenges of obtaining the total number of prepaid access transactions, FinCEN estimated, in its most recent control number renewal, that the annual recordkeeping burden per financial institution

⁴⁵ See Table 1 *supra* for the estimated number of MSBs that provide money transmission services.

⁴⁶ 82 FR 31686, 31688 (July 7, 2017). Note that, due to an administrative error, the 2017 control number renewal inadvertently describes this 12 hour burden as applicable to the requirements of 31 CFR 1010.410(g) rather than 31 CFR 1010.410(f).

⁴⁷ See Table 1 *supra*. 23,234 equates to 10,542 banks and 12,692 MSBs that provide money transmission services.

was 16 hours. FinCEN continues to estimate that the annual hourly burden to comply with 31 CFR 1022.420 is 16 hours per financial institution.

1,632 MSBs which are providers or sellers of prepaid access,⁴⁸ multiplied by 16 hours, results in a total annually hourly burden estimate of 26,112 hours.

Total Annual Traditional PRA Hourly Burden for OMB Control Number 1506-

0058: 1,854,742 hours (1,346,750 + 203,072 + 278,808 + 26,112).⁴⁹

OMB Control Number 1506-0059

31 CFR 1020.410

Banks, including credit unions, are required to (i) collect and retain information on funds transfers when acting as the transmitting, intermediary, or recipient bank, and (ii) retain an original or copy of records, when conducting transactions outlined in 31 CFR 1020.410(c). Due to the challenges of obtaining the total number of funds transfers of \$3,000 or more conducted by each bank acting as the transmitting, intermediary, or recipient bank, and the challenges of obtaining the total number of transactions that would trigger each of the recordkeeping requirements per bank, as required by 31 CFR 1020.410(c), FinCEN estimated, in its most recent control number renewal, that the annual recordkeeping burden per bank was 100 hours. FinCEN continues to estimate that the annual hourly burden to comply with all of the recordkeeping requirements in 31 CFR 1020.410 is 100 hours per bank.

10,542 banks⁵⁰ multiplied by 100 hours results in a total annual hourly burden estimate of 1,054,200 hours.

Total Annual Traditional PRA Hourly Burden for OMB Control Number 1506-

0059: 1,054,200 hours.

⁴⁸ See Table 1 *supra* for the total number of MSBs that are providers or sellers of prepaid access.

⁴⁹ 1,346,750 hours (31 CFR 1010.410(a)-(c)) + 203,072 hours (31 CFR 1010.410(e)) + 278,808 hours (31 CFR 1010.410(f)) + 26,112 hours (31 CFR 1022.420) = 1,854,742 hours.

⁵⁰ See Table 1 *supra* for the total number of banks.

Total Annual Traditional PRA Hourly Burden for OMB Control Numbers 1506-0058 and 1506-0059.

FinCEN's estimate of the total traditional annual PRA burden for each of the recordkeeping requirements being renewed in this notice is 2,908,942 hours, as detailed in Table 2 below:

Table 2. Breakdown of financial institutions impacted by each regulatory requirement, and the estimated total annual burden hours per requirement

Regulatory Requirement	Type of Financial Institution Impacted by the Requirement	Number of Financial Institutions	Traditional Annual Burden Estimate per Financial Institution	Total Annual Burden Hours per Regulatory Requirement
31 CFR 1010.410(a) – (c)	Banks, brokers or dealers in securities, FCMs, and MSBs that conduct money transmission	26,935	50 hours	1,346,750
31 CFR 1010.410(e)	MSBs that conduct money transmission	12,692	16 hours	203,072
31 CFR 1010.410(f)	Banks and MSBs the conduct money transmission	23,234	12 hours	278,808
31 CFR 1022.420	MSBs that are providers or sellers of prepaid access	1,632	16 hours	26,112
31 CFR 1020.410	Banks	10,542	100 hours	1,054,200
Total annual hour burden hours				2,908,942

To calculate the hourly costs of the burden estimate, FinCEN identified three roles and corresponding staff positions involved in maintaining records as required by 31 CFR 1010.410, 1020.410, and 1022.420: (i) general supervision (providing process oversight); (ii) direct supervision (reviewing operational-level work and cross-checking all or a sample of the work product against supporting documentation); and (iii) clerical work (engaging in recordkeeping).

FinCEN calculated the fully-loaded hourly wage for each of these three roles by using the median wage estimated by the U.S. Bureau of Labor Statistics (BLS),⁵¹ and computing an additional benefits cost as follows:

Table 3. Fully-loaded hourly wage by role and BLS job position for all financial institutions covered by this notice

Role	BLS-Code	BLS-Name	Median Hourly Wage	Benefit Factor	Fully-loaded Hourly Wage
General supervision	11-3031	Financial Manager	\$62.45	1.50	\$93.68
Direct supervision	13-1041	Compliance Officer	\$33.20	1.50	\$49.80
Clerical work (research, review, and recordkeeping)	43-3099	Financial Clerk	\$20.40	1.50	\$30.60

FinCEN estimates that, *in general and on average*,⁵² each role would spend different amounts of time on each portion of the traditional annual PRA burden, as follows:

The cost of each hour of burden, broken down by role, to produce and maintain records as outlined in 31 CFR 1010.410, 1020.410, and 1022.420 would be \$37.00 as set out in Table 4 below:

Table 4. Weighted average hourly cost of making and maintaining the records

General Supervision		Direct Supervision		Clerical Work		Weighted Average Hourly Cost
% Time	Hourly Cost	% Time	Hourly Cost	% Time	Hourly Cost	
5%	\$4.68	15%	\$7.47	80%	\$24.48	\$37.00

\$36.63 rounded to \$37.00

⁵¹ The U.S. Bureau of Labor Statistics, Occupational Employment Statistics-National, May 2019, available at <https://www.bls.gov/oes/tables.htm>. The most recent data from the BLS corresponds to May 2019. For the benefits component of total compensation, see U.S. Bureau of Labor Statistics, Employer's Cost per Employee Compensation as of December 2019, available at <https://www.bls.gov/news.release/ecec.nr0.htm>. The ratio between benefits and wages for financial activities is \$15.95 (hourly benefits)/\$32.05 (hourly wages) = 0.50. The benefit factor is 1 plus the benefit/wages ratio, or 1.50. Multiplying each hourly wage by the benefit factor produces the fully-loaded hourly wage per position.

⁵² By "in general," FinCEN means without regard to outliers (e.g., financial institutions that conduct transactions that trigger the recordkeeping requirements described in this notice with complexities or volumes that are uncommonly higher or lower than those of the population at large). By "on average," FinCEN means the mean of the distribution of each subset of the population.

The total estimated cost of the traditional annual PRA burden for the regulatory requirements being renewed in this notice is \$107,630,854, as reflected in Table 5 below:

Table 5. Total cost of traditional annual PRA burden

OMB Control Number	Hourly Burden	Hourly Cost	Total Cost
1506-0058	1,854,742	\$37	\$68,625,454
1506-0059	1,054,200	\$37	\$39,005,400
Total cost			\$107,630,854

Part 3. Future annual PRA burden

In the future, FinCEN will include the burden and cost for each type of recordkeeping requirement covered by the regulations being renewed. The future burden estimate will also include estimates of the number of transactions conducted annually per financial institution, which trigger each recordkeeping requirement.

31 CFR 1010.410(a) through (c)

As noted above, each financial institution must retain an original or a copy of records related to extensions of credit in excess of \$10,000 (other than those secured by real property), and an original or copy of records related to transfers of funds, currency, other monetary instruments, checks, investment securities, or credit of more than \$10,000 to or from the United States. In order to more accurately estimate the related PRA burden in the future, FinCEN intends to obtain a better understanding of how many types of financial institutions conduct these transactions, and the average volume of such transactions per financial institution.

31 CFR 1010.410(e)

As described in greater detail in Section I above, each nonbank financial institution must collect and retain information related to transmittals of funds in amounts of \$3,000 or more. In order to more accurately estimate the related PRA burden in the future, FinCEN intends to obtain a better understanding of the volume of

transmittals of funds conducted by MSBs, and determine the average volume of transmittals of funds per the transmitting, intermediary, or recipient MSB.

31 CFR 1010.410(f)

As described in greater detail in Section I above, each financial institution must transmit information on funds transfers and transmittals of funds when acting as the transmitting or the intermediary financial. In order to more accurately estimate the related PRA burden in the future, FinCEN intends to obtain a better understanding of the volume of funds transfers and transmittals of funds conducted by banks and MSBs, and determine the average volume of funds transfer per bank and transmittals of funds per transmitting or intermediary bank or MSB.

31 CFR 1022.420

Each provider or seller of prepaid access is required to maintain access to transactional records generated in the ordinary course of business that would be needed to reconstruct prepaid access activation, loads, reloads, purchases, withdrawals, transfers, or other prepaid-related transactions. In order to more accurately estimate the related PRA burden in the future, FinCEN intends to obtain a better understanding of the volume of prepaid access transactions conducted by MSBs, and determine the average volume of prepaid transactions per MSB.

31 CFR 1020.410(a)

As described in greater detail in Section I above, banks, including credit unions, are required to collect and retain information on funds transfers in amounts of \$3,000 or more, conducted by the bank acting as the transmitting, intermediary, or recipient bank. In order to more accurately estimate the PRA burden in the future, FinCEN intends to obtain a better understanding of the volume of funds transfers conducted by banks, and determine the average volume of funds transfer per transmitting, intermediary, or recipient bank.

31 CFR 1020.410(c)

As described in greater detail in Section I, banks, including credit unions, are required to retain an original or copy of the records outlined in 31 CFR 1020.410(c). In order to more accurately estimate the PRA burden in the future, FinCEN intends to obtain a better understanding of how many banks conducted each of the 13 types of transactions described in 31 CFR 1020.410(c), and determine the average volume of these transactions per bank.

FinCEN does not have the information needed to estimate the number of annual transactions that trigger each recordkeeping requirement being renewed in this notice. For that reason, FinCEN is relying on estimates used in prior renewals of these OMB control numbers and the applicable regulations. FinCEN further recognizes that after receiving public comments as a result of this notice, future annual PRA hourly burden and cost estimates may vary significantly. In order to arrive at more precise estimates of net BSA hourly burden and cost, FinCEN intends to conduct more granular studies in the near future, regarding the types and volume of transactions conducted annually, which trigger each recordkeeping requirement, and the time it takes to collect and record the information required for each recordkeeping requirement.⁵³ The data obtained in these studies also may result in a significant variation of the estimated annual PRA burden.

Estimated Number of Respondents: 28,567, as set out in Table 1.

⁵³ Net hourly burden and cost are the burden and cost a financial institution incurs to comply with requirements that are unique to the BSA, and that do not support any other business purpose or regulatory obligation of the financial institution. Burden for purposes of the PRA does not include the time and financial resources needed to comply with an information collection, if the time and resources are for things a business (or other person) does in the ordinary course of its activities if the agency demonstrates that the reporting activities needed to comply are usual and customary. 5 CFR 1320.3(b)(2). For example, depending on the nature of the transaction, a financial institution may be collecting and maintaining some of the same information on funds transfers, transmittals of funds, prepaid access transactions, as well as other transactions that are required to be recorded in 31 CFR 1010.410, 1020.410, and 1022.420 in order to satisfy other obligations. Those obligations may include (i) protecting the financial institution from fraud against itself or its customers, (ii) complying with other non-BSA regulatory requirements such as those imposed by the specific Federal functional regulator, or (iii) maintaining proper accounting information.

Estimated Total Annual Recordkeeping Burden: The estimated total annual PRA burden is 2,908,942 hours, as set out in Table 2.

Estimated Total Annual Recordkeeping Cost: The estimated total annual PRA cost is \$107,630,854, as set out in Table 5.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

Part 4 – Request for Comments

a) Specific request for comments on the traditional annual PRA hourly burden and cost.

FinCEN invites comments on any aspect of the traditional annual PRA burden, as set out in Part 2 of this notice. In particular, FinCEN seeks comments on the adequacy of: (i) FinCEN's assumptions underlying its estimate of the burden; (ii) the estimated number of hours required by each portion of the burden; and (iii) the organizational levels of the financial institution engaged in each portion of the burden, their estimated hourly remuneration, and the estimated proportion of participation by each role. FinCEN encourages commenters to include any publicly available sources for alternative estimates or methodologies.

b) Specific request for comments on the proposed criteria for determining the scope of the future annual PRA hourly burden and cost estimate.

FinCEN invites comments on any aspect of the criteria for a future estimate of the annual PRA burden, as set out in Part 3 of this notice.

c) Specific request for comments on the appropriate criteria, methodology, and questionnaire required to obtain information to more precisely estimate the future annual PRA hourly burden and cost.

FinCEN invites comments on the most appropriate and comprehensive means to question financial institutions about the annual hourly burden and cost attributable solely to the regulations covered by this notice (i.e., the hourly burden and cost of complying with the recordkeeping requirements imposed exclusively by the BSA, which are not used to satisfy contractual obligations, other regulatory requirements, or business purposes of the financial institution). The future annual PRA hourly burden and cost estimate must take into consideration only the information collected and recorded that is used exclusively to comply with requirements under 31 CFR 1010.410, 1020.410, and 1022.420.

FinCEN seeks comments from the public regarding any questions we should consider posing in future notices, in addition to the specific questions for comment outlined directly below. Also, due to the difficulty involved in estimating the number of transmittals of funds conducted by MSBs, the number of funds transfers conducted by banks, and the number of prepaid transactions conducted by MSBs, along with the number of other types of transactions conducted financial institutions, as described in this notice, FinCEN welcomes any suggestions as to how to derive these estimates by using publicly available financial information.

d) Specific questions for comment associated with making and retaining records required by the regulations described in this notice:

1) Complying with 31 CFR 1010.410(a) through (c)

- Is FinCEN's assertion correct that banks, credit unions, FCMs, and MSBs are the only financial institutions that conduct extensions of credit in excess of \$10,000 (other than those secured by real property)?
- On average, how many extensions of credit in excess of \$10,000 (other than those secured by real property) does your financial institution issue annually, which trigger the recordkeeping requirement in 31 CFR 1010.410(a)?

- Is FinCEN's assertion correct that banks, credit unions, FCMs, and MSB are the only financial institutions that conduct transactions which trigger the recordkeeping requirements in 31 CFR 1010.410(b) and (c)?
- On average, how many transfers does your financial institution conduct annually which trigger the recordkeeping requirements in 31 CFR 1010.410(b) and (c)?

2) Complying with 31 CFR 1010.410(e)

- Is FinCEN's assertion correct that money transmitters are the only nonbank financial institutions that conduct transmittals of funds in the amount of \$3,000 or more?
- On average, how many transmittals of funds in the amount of \$3,000 or more does your MSB conduct annually when acting as the transmitting, intermediary, or recipient MSB in a transmittal of funds?
- On average, how long does it take your MSB to collect and retain the records required to be maintained when you are acting as the transmitting, intermediary, or recipient MSB in the transmittal of funds?

3) Complying with 31 CFR 1010.410(f)

- Is FinCEN's assertion correct that banks, credit unions, and money transmitters are the only financial institutions that act as an intermediary financial institution in a funds transfer or transmittal of funds?
- On average, how often is your financial institution the intermediary in a funds transfer or transmittal of funds?
- On average, how long does it take your financial institution to record and transmit the required information on a funds transfer or transmittal of funds?

4) Complying with 31 CFR 1020.410(a)

- On average, how many funds transfers in the amount of \$3,000 or more does your bank conduct annually as the transmitting, intermediary, or recipient bank in a funds transfer?
- On average, how long does it take your financial institution to collect and retain the records required to be maintained when you are acting as the transmitting, intermediary, or recipient bank in a funds transfer?

5) Complying with 31 CFR 1020.410(c)

- On average, how often does your bank conduct each of the transactions described in 31 CFR 1020.410(c) as explained in further detail in Section I?
- On average, how long does it take your bank to collect and retain the records required to be maintained when you conduct one of the transactions described in 31 CFR 1020.410(c)?

6) Complying with 31 CFR 1022.420

- On average, how many of the following prepaid transactions does your financial institution conduct: access activations, loads, reloads, purchases, withdrawals, transfers, and other prepaid access-related transactions?

e) General request for comments.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (i) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) the accuracy of the agency's estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (v) estimates of

capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

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